

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

REC'D IN  
REGULATORY AUTH.

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IN RE:

APPLICATION OF MEMPHIS NETWORKX, LLC  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATION SERVICES AND JOINT  
PETITION OF MEMPHIS LIGHT GAS & WATER  
DIVISION, A DIVISION OF THE CITY OF  
MEMPHIS, TENNESSEE ("MLGW") AND A&L  
NETWORKS-TENNESSEE, LLC ("A&L") FOR  
APPROVAL OF AGREEMENT BETWEEN MLGW  
AND A&L REGARDING JOINT OWNERSHIP OF  
MEMPHIS NETWORKX, LLC.

OFFICE OF THE  
EXECUTIVE SECRETARY

Docket No. 99-00909

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**JOINT STIPULATIONS OF FACT**

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Applicant Memphis Networkx, LLC ("Memphis Networkx"), Joint Petitioners Memphis Light, Gas & Water Division ("MLGW") and Memphis Broadband, LLC ("Memphis Broadband"), and Intervenor Tennessee Cable Telecommunications Association ("TCTA") and Time Warner Communications and Time Warner Telecom of the Mid-South, L.P. (collectively, "Time Warner") hereby file these Joint Stipulations of Fact. In connection with the filing of these Joint Stipulations of Fact, the parties hereto have agreed that Memphis Networkx, MLGW and Memphis Broadband will not rely upon any fact or facts that are contrary to the facts set forth herein but shall not be precluded from relying upon any other fact or facts; and that TCTA and Time Warner neither object to nor support the Application and Joint Petition and have agreed to the submission of the Application and Joint Petition for the Tennessee Regulatory

Authority's consideration and determination on the record without their further participation in cross-examination of witnesses or submission of briefs, testimony or other pleadings. Memphis Networx, MLGW, and Memphis Broadband shall be permitted to present witnesses and to submit further briefs and pleadings in support of the Application and Joint Petition.

### **The Application and Joint Petition**

1. The Application and Joint Petition has been filed pursuant to Tenn. Code Ann. § 7-52-103(d), Tenn. Code Ann. § 7-52-401, *et seq.*, and Tenn. Code Ann. § 65-4-201.

2. Applicant Memphis Networx is a board managed Tennessee limited liability company. The two members of Memphis Networx are MLGW and Memphis Broadband.

3. Joint Petitioner Memphis Light, Gas and Water was created by Chapter 381 of the Private Acts of 1939, amending the Charter of the City of Memphis. The MLGW Charter grants the Board of Commissioners of MLGW the jurisdiction, control and management of MLGW. The Board of Commissioners has no power or authority to expend tax dollars or to commit the taxing power of the City of Memphis.

4. Joint Petitioner Memphis Broadband is a manager managed Delaware limited liability company. Memphis Broadband acquired the entire interest of A&L in Memphis Networkx, and neither A&L, nor its parent, or any subsidiary or affiliate (including Alex Lowe, Aptus Networks, LLC, and A&L Underground, Inc.) has any interest or control, direct or indirect, in Memphis Broadband or Memphis Networkx. A copy of the assignment of A&L's interest in Memphis Networkx to Memphis Broadband is attached as Exhibit 1.

5. In connection with Memphis Broadband's acquisition of A&L's interest in Memphis Networkx, an Amended and Restated Operating Agreement has been filed for approval as Exhibit U to the Application and Joint Petition, as amended. The Amended and Restated Operating Agreement requires approval of the Tennessee Regulatory Authority under Tenn. Code Ann. § 7-52-103(d), and any future amendments to the Amended and Restated Operating Agreement that require approval will be submitted to the Tennessee Regulatory Authority for approval.

6. Certain conduit owned by A&L Underground, Inc. has been at issue in this proceeding. That conduit was installed by A&L Underground, Inc. in various new subdivisions in Shelby County, Tennessee. Memphis Networkx has no ownership interest in that conduit and has no plans to purchase or otherwise utilize any such conduit in its operations.

## **The MLGW Telecommunications Division**

7. By Resolution of its Board of Commissioners, MLGW has created and empowered a sub-division (the “Telecommunications Division”) of the Electric Division of MLGW. A copy of the Resolution of the Board of Commissioners is attached as Exhibit D to the Application and Joint Petition, as amended.

8. Among the functions of the Telecommunications Division are to (i) enter into the inter-division loan between the Electric Division and the Telecommunications Division, (ii) hold MLGW’s equity ownership interest as a member in Memphis Networkx, and (iii) capture any internal cost allocations under MLGW’s Cost Allocation Manual.

9. The Telecommunications Division does not currently own any telecommunications plant or equipment and has not hired any employees.

10. If the Telecommunications Division seeks to engage in activities requiring regulatory approval, the Telecommunications Division will first obtain necessary regulatory approvals.

## **The MLGW Inter-division Loan and Cost Allocation Manual**

11. By Resolution, the Board of Commissioners of MLGW has authorized an inter-division loan between the Telecommunications Division and the Electric Division in an amount not to exceed \$20 million. A copy of the Resolution is attached as Exhibit D to the Application and Joint Petition, as amended. The Telecommunications Division has executed a note in favor of the Electric Division of MLGW in an amount not to exceed \$20 million to document this inter-division loan. A copy of this note is attached hereto as Exhibit 2.

12. The State Director of Local Finance has approved the inter-division loan in an approximate amount of \$5.5 million, subject to certain terms and conditions set forth in the letters attached as Exhibit N to the Application and Joint-Petition, as amended, and as Exhibit B to the Revised Pre-Filed Testimony of John McCullough.

13. Any inter-division loan will be evidenced by a note containing an unconditional promise to pay, a rate of interest as required under Tenn. Code Ann. § 7-52-402, and repayment terms and such other terms and conditions as may be required by the State Director of Local Finance pursuant to Tenn. Code Ann. § 7-52-402 and other applicable law.

14. MLGW has established and agreed to follow a Cost Allocation Manual to allocate MLGW's internal costs to the Telecommunications Division. MLGW filed its Cost Allocation Manual on April 5, 2000 in response to the Second Set of Staff Data Requests.

15. MLGW will engage an independent auditor to perform annual audits of its cost allocations and affiliate transactions and to render an opinion on MLGW's compliance with its Cost Allocation Manual and its Proposed Safeguards. MLGW will submit the opinion of such auditor to the Tennessee Regulatory Authority for review.

16. MLGW will maintain its records so that its cost allocations and affiliate transactions can be separately audited and reviewed by the Tennessee Regulatory Authority.

17. Section 9.1 of the Amended and Restated Operating Agreement lists the capital contributions of MLGW and Memphis Broadband to Memphis Networx as of November 29, 2000. As of November 29, 2000, MLGW had made capital contributions to Memphis Networx in the amount of \$2,795,185.00 and Memphis Broadband had made capital contributions in the amount of \$2,789,359.60. These capital contributions account for various expenses in connection with the organization of Memphis Networx and various expenses following the formation of Memphis Networx. These expenses include attorney

and consultant fees, employee salaries and benefits, rent, utilities, furnishings, equipment, cable testing and various other expenses. As of November 29, 2000, MLGW had made an additional capital contribution to Memphis Networkx in the amount of \$1,422,186 for the purchase of fiber optic cable. The total amount of MLGW's capital contributions to Memphis Networkx through November 29, 2000 was \$4,217,371, and these capital contributions will be offset against MLGW's obligation to make further capital contributions to Memphis Networkx. These amounts are as of November 29, 2000 and have increased since that date. The MLGW Cost Allocation Manual requires allocation of direct costs and a portion of common costs to the Telecommunications Division, such as MLGW's employee salary and benefits, related office space and equipment costs, legal and consulting fees, travel expenses and other expenses. As of November 29, 2000, the amount accrued for allocation to the Telecommunications Division under the Cost Allocation Manual is \$678,492.70. The allocation of expenses to the Telecommunications Division under the Cost Allocation Manual will not be counted as a capital contribution towards MLGW's membership interest in Memphis Networkx.

18. Upon obtaining regulatory approval of the Certificate of Convenience and Necessity for Memphis Networkx and the Amended and Restated Operating Agreement, the Telecommunications Division will make an immediate draw on the inter-division loan to pay the Electric Division the amount of all of MLGW's start up and organizational expenses to or for the

benefit of Memphis Networkx plus the amount of separate internal costs allocated to the Telecommunications Division from other Divisions of MLGW under the Cost Allocation Manual.

### **MLGW Affiliate Transaction Safeguards**

19. MLGW has established and agreed to follow Proposed Safeguards relating to transactions between MLGW and Memphis Networkx. A copy of the Proposed Safeguards is attached as Exhibit A to the Pre-filed Rebuttal Testimony of John McCullough, and MLGW has also agreed to adopt the changes recommended by Mr. Archie Hickerson on behalf of the Consumer Advocate Division.

20. Notwithstanding any provisions or testimony imposing less frequent reporting requirements, MLGW and Memphis Networkx have agreed to report all transactions between Memphis Networkx and MLGW to the Tennessee Regulatory Authority on a quarterly basis for the first twenty-four months of operations and annually for all succeeding years.

### **Memphis Broadband**

21. The capital account of Memphis Broadband as of November 29, 2000 is \$2,789,359.60, as reflected in Section 9.1 of the Amended and



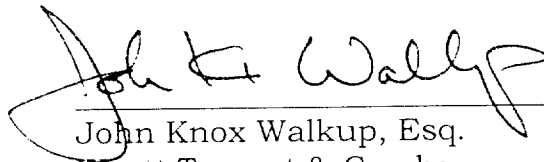
Restated Operating Agreement. No portion of the purchase price paid or which might be paid by Memphis Broadband to A&L in excess of such amount in connection with the acquisition of A&L's membership interest in Memphis Networx (i) would increase Broadband's percentage ownership; (ii) would require a correlative contribution by MLGW to maintain its proportionate ownership interest; or (iii) would be treated as a contribution of capital to Memphis Networx.

Respectfully submitted,



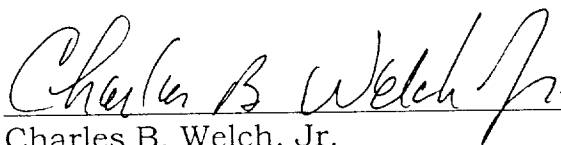
D. Billye Sanders, Esq.  
Waller Lansden Dortch & Davis,  
A Professional Limited Liability Company  
511 Union Street, Suite 2100  
Nashville, Tennessee 37219-1760

Attorney for MLGW and Memphis Networx,  
LLC



John Knox Walkup, Esq.  
Wyatt Tarrant & Combs  
2525 West End Avenue  
Suite 1500  
Nashville, Tennessee 37203

Attorney for Memphis Broadband, LLC  
and Memphis Networx, LLC

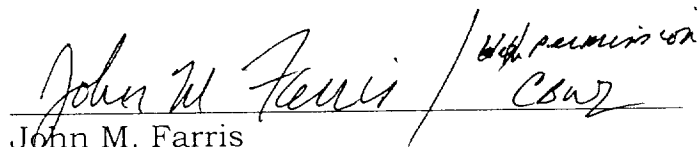


Charles B. Welch, Jr.

Farris, Mathews, Branam, Bobango & Hellen,  
P.L.C.

618 Church Street, Suite 300  
Nashville, TN 37219

Time Warner Telecommunications of the Mid-  
South, L.P. and the Tennessee Cable  
Telecommunications Association



John M. Farris


Farris, Mathews, Branam, Bobango & Hellen,  
P.L.C.

One Commerce Square, Suite 2000  
Memphis, TN 38103

Attorney for Time Warner Communications

CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 31<sup>st</sup> day of March, 2001, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the Counsel of Record listed below.

  
D. Billye Sanders

Vance Broemel, Esq.  
Office of the Attorney General  
Consumer Advocate Division  
Cordell Hull Building  
425 5<sup>th</sup> Avenue North  
Nashville, TN 37243-0500

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P. O. Box 198062  
Nashville, TN 37219

Attorney for Concord Telephone  
Exchange, Inc., Humphreys County  
Telephone Company, Tellico Telephone  
Company, Inc. and Tennessee Telephone  
Company

Attorney for NEXTLINK, Tennessee,  
Inc.

ASSIGNMENT OF MEMBERSHIP INTEREST  
AND AMENDMENT TO OPERATING AGREEMENT OF  
MEMPHIS NETWORKX, LLC

THIS AGREEMENT (the "**Agreement**") dated and effective as of November 29, 2000, is made and entered into by and among A&L NETWORKS-TENNESSEE, LLC, a Kansas limited liability company and a member of the "Company" (as defined herein) ("**Assignor**"), MEMPHIS BROADBAND, LLC, a Delaware limited liability company ("**Assignee**"), and MEMPHIS LIGHT, GAS & WATER DIVISION, a division of the City of Memphis, Tennessee ("**MLG&W**").

WITNESSETH:

WHEREAS, Assignor and MLG&W are the only members (the "**Members**") of Memphis Networkx, LLC, a Tennessee limited liability company (the "**Company**"), and are parties to an Operating Agreement of the Company dated as of November 8, 1999, as amended by Amendment No. 1 thereto dated as of October 18, 2000 (collectively, the "**Operating Agreement**"), which governs their mutual rights and obligations with respect to the Company; and

WHEREAS, Assignor and Assignee are parties to a Membership Interest Purchase Agreement dated as of November 17, 2000 (the "**Purchase Agreement**"), pursuant to which, *inter alia*, on the date hereof Assignee is purchasing the Membership Interest of Assignor in the Company (the "**Transferred Interest**") upon the terms and subject to the conditions set forth in the Purchase Agreement; and

WHEREAS, the parties' execution and delivery of this Agreement is a condition precedent to the consummation of the transactions contemplated by the Purchase Agreement; and

WHEREAS, the parties desire to enter into this Agreement in order to carry out the vesting, transfer and assignment of the Transferred Interest, to confirm Assignee's ownership of and title to the Transferred Interest, and to amend the Operating Agreement to reflect the foregoing assignment and the admission of Assignee as a Member of the Company;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. *Defined Terms.* Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Operating Agreement.

2. *Assignment of Membership Interest.* Assignor hereby transfers, assigns, conveys and delivers to Assignee all right, title and interest of Assignor in and to the

Exhibit 1

Transferred Interest, free and clear of all "Encumbrances" (as defined in the Purchase Agreement).

3. *Acceptance of Membership Interest.* Assignee hereby (i) accepts the foregoing transfer and assignment of the Transferred Interest from Assignor, (ii) adopts and agrees to be bound by the terms and conditions of the Operating Agreement, and (iii) assumes, and agrees to satisfy and perform, all of Assignor's obligations with respect to the Transferred Interest as and when such obligations become due.

4. *Consent to Assignment and to Continuation of the Company.* MLG&W hereby consents to the foregoing assignment of the Transferred Interest to Assignee and to the admission of Assignee as a Member of the Company. MLG&W and Assignee hereby consent to the continuation of the existence and the "Business" (as defined in the Purchase Agreement) of the Company.

5. *Amendment of Operating Agreement.* The Operating Agreement is hereby amended to reflect the foregoing assignment of the Transferred Interest and the admission of Assignee as a Member of the Company and the holder of the Transferred Interest.

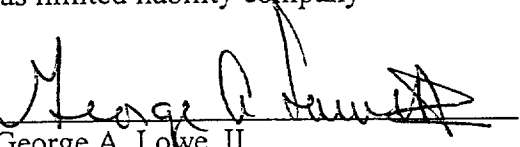
6. *Post-Closing Tax Election.* MLG&W and Assignee hereby covenant and agree that they will cause the Company to execute, acknowledge and timely deliver and file with the Internal Revenue Service all statements necessary for the Company to make an election under Section 754 of the Code to adjust the basis of the Company's property in connection with the transfer of the Transferred Interest, if such an election will result in a higher basis in the Company's property for federal income tax purposes.

7. *Miscellaneous.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement shall become effective, as of the date specified in the opening paragraph, upon the execution by all of the parties of at least one counterpart hereof, and it shall not be necessary that any single counterpart bear the signatures of all parties. The execution and delivery of this Agreement by delivery of a facsimile copy bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party, and such facsimile copies shall constitute enforceable original documents. This Agreement shall inure to the benefit of and be binding upon the parties named herein, and their respective heirs, executors, administrators, successors, and assigns. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Tennessee without regard to principles of conflicts of laws.

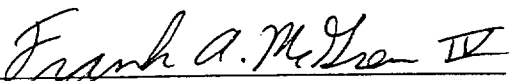
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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

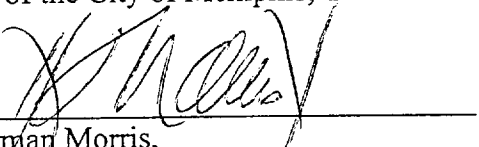
A&L NETWORKS-TENNESSEE, LLC, a  
Kansas limited liability company

By:   
George A. Lowe, II,  
Manager

MEMPHIS BROADBAND, LLC, a Delaware  
limited liability company

By:   
Frank A. McGrew, IV,  
Manager

MEMPHIS LIGHT, GAS & WATER DIVISION, a  
division of the City of Memphis, Tennessee

By:   
Herman Morris,  
President and Chief Executive Officer

REVOLVING LINE OF CREDIT NOTE

\$20,000,000.00

Memphis, Tennessee  
September 30, 1999

FOR VALUE RECEIVED, the undersigned, TELECOMMUNICATIONS DIVISION OF THE ELECTRIC DIVISION OF THE MEMPHIS LIGHT, GAS AND WATER DIVISION, OF THE CITY OF MEMPHIS (hereinafter referred to as "Maker"), promises to pay to the order of THE ELECTRIC DIVISION OF THE MEMPHIS LIGHT, GAS AND WATER DIVISION, OF THE CITY OF MEMPHIS (hereinafter referred to as "Payee"), the sum of Twenty Million and No/100 Dollars (\$20,000,000.00), or so much thereof as shall be advanced from time to time by the Payee to the Maker, together with interest as follows: The interest rate for each calendar month shall be the monthly average of the prime lending rate posted by a majority of the nation's largest banks that appear daily in *The Wall Street Journal* less three (3) percentage points.

Interest on all advances outstanding shall be paid semi-annually with such payments being due and payable on January 1 and July 1 each year.

On the maturity date, January 1, 2010 (the "Maturity Date") the entire outstanding principal balance, together with all accrued and unpaid interest, shall be immediately due and payable in full.

Prior to the Maturity Date, Maker may borrow up to the principal amount of this Note and repay (without premium or penalty) and re-borrow funds so long as the principal amount of the funds disbursed hereunder at no time exceeds Twenty Million and No/100 Dollars (\$20,000,000.00).

Time is of the essence of this Note. It is hereby expressly agreed that in the event that any default be made in the payment of any part of interest or principal in accordance with the terms hereof, or upon failure of Maker to keep and perform all the covenants, promises, agreements, conditions and provisions of this Note, or any other instrument or document now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced hereby; then, in any such case, the entire unpaid principal sum evidenced by this Note, together with all accrued interest, shall, at the option of the Payee, without notice, become due and payable forthwith, regardless of the stipulated Maturity Date. Upon the occurrence of any default as set forth herein, at the option of Payee and without notice to Maker, all accrued and unpaid interest, if any, shall be added to the outstanding principal balance hereof, and the entire outstanding principal balance, as so adjusted, shall bear interest thereafter until paid, regardless of whether or not there has been an acceleration of the payment of principal as set forth herein. All such interest shall be paid at the time of and as a condition precedent to the curing of any such default. Failure of Payee to exercise this right of accelerating the maturity of the debt, or indulgence granted from time to time, shall in no event be considered as a waiver of said right of acceleration or stop Payee from exercising said right.

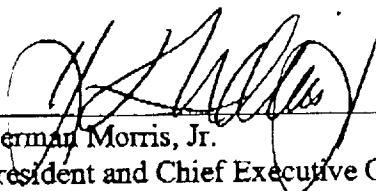
JM 0125

Exhibit 2

IN WITNESS WHEREOF, this Note has been duly executed by Maker the day and year first above written.

TELECOMMUNICATIONS DIVISION OF THE  
ELECTRIC DIVISION OF THE MEMPHIS LIGHT,  
GAS AND WATER DIVISION, OF THE CITY OF  
MEMPHIS

By: \_\_\_\_\_

  
Herman Morris, Jr.  
President and Chief Executive Officer